DR. AMBEDKAR AS THE LAW MINISTER AND A MEMBER OF OPPOSITION IN THE INDIAN PARLIAMENT
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* FOREGN EXCHANGE REGULATION (AMENDMENT) BILL

Mr. Speaker: Motion moved.

" That the Bill to amend the Foreign Exchange Regulation Act, 1947, be taken into consideration. "

What has the Law Member to say about the position regarding the expression ' British India '?

The Honourable Dr. B. R. Ambedkar (Minister for Law): I thought I would speak when the amendment was being moved, in reply to it. If you so desire, I shall explain the position.

Mr. Speaker: Yes, because it would save time.

The Honourable Dr. B. R. Ambedkar: Sir, we have got what is called an Existing Laws Adaptation Order in which certain terms are defined. In that order the term ' British India ' is defined and is defined to mean ' all the Provinces of British India '. It is therefore open to the House to include in this particular Bill either of the two phrases which under the Adaptation Order mean the same thing. We could either use ' British India ' or we could use ' all the provinces of India ' which would mean one and the same thing. The

question of these two alternatives and as to which of them we should adopt really has to be determined by the phraseology which has been used in the main Bill to which this Bill is merely an amendment. In the original Bill dealing with foreign exchange regulation, the term used is ' British India ' and my submission is that if this amendment is to be intelligible it must use common phraseology, which is ' British India '.

There is nothing to be lost, everything to be gained, by using the same phraseology. The amendment, which is tabled, is purely sentimental in my judgement and wishes to avoid the word ' British ' from the text of the law.

Shri K. Santhanam (Madras: General): Not at all,

The Honourable Dr. B. R. Ambedkar: My submission is that in view of the necessity for uniformity between the main Act and the amending Act we should adopt the same phraseology which has been used in the main Act.

Mr. R. K. Sidhwa (C. P. and Berar : General) : May I know whether there is any legal difficulty if the word ' British ' is omitted ?

Mr. Speaker: That is exactly what the Law Member has pointed out. Without going into the merits of the case, and looking *prima facie* into what the Law Member has said, I shall curtail the discussion by saying that I refuse to give my leave to this amendment.

APPOINTMENT OF STATUTORY LAW REVISION COMMITTEE

The **Honourable Dr. B. R. Ambedkar** (Minister for Law): Mr. Chairman, I may at once say that the object of the Mover is quite laudable and that he has my full sympathy in the Motion that he has made. Sir, there is no doubt that periodical revisions of law in a modern society is an absolute necessity. When a popular Legislature engages itself in the task of legislation, touching every aspect of the society which it governs, there are bound to be created certain problems, which it is necessary for some expert legal body to examine and to rectify. First of all, it happens that a draftsman in order to put an idea in the form of a law suggests certain phraseology, which he thinks is appropriate and complete enough to embody the intention of the Legislature. In a certain stage the Judiciary and the Members of the profession find that the phraseology used by the draftsman is mistaken and does not carry the intent which the Legislature had. That problem therefore becomes a problem, which somebody has got to look into and *rectify* to bring it in consonance with the original intention. It often happens that when a Legislature is engaged in of course of legislation over an extensive period certain inconsistencies unconsciously creep in. It is not always possible either for the draftsman or for the legislature to examine every piece of legislation that is brought before it

with a view to find out whether that piece of legislation is consistent with other legislation which has proceeded it. Therefore in course of time these inconsistencies accumulate. They trouble lawyers, they trouble judges and they also trouble the litigating public. It also often happens that in modern time when a legislature is so busy that it is unable to give the whole of its time to codifying the whole of the law on a particular subject it tries to discharge its 4-00 P. M. responsibilities by undertaking what we call fragmentary and piecemeal legislation. This accumulation of piecemeal and fragmentary legislation again in course of time creates a problem. People cannot understand what the law is and consequently a problem of codifications arises. Therefore, it needs no special pleading to suggest that a Statute Law Revision Committee is necessary. I think the Government of India long ago accepted the necessity of having a Statute Law Revision Committee. In fact as soon as the Montagu-Chelmsford reforms came into operation and when it was found that there was a popular legislature and that popular legislature was more likely to undertake legislation of social reform than the previous legislator had been likely to do, the Government *of India pari passau* and simultaneously with the introduction of the Montagu-Chelmsford reforms introduced and established what was called a Statutory Law Revision Committee in 1921. Therefore there is no difficulty in my accepting the underlying purpose which my honourable Friend Sir Hari Singh Gour has in mind, namely, that there should be a Statute Law Revision Committee. The only point of difference between him and me is whether we should forthwith proceed to establish a Statute Law Revision Committee that he has in mind or whether we should leave the matter to Government to think about the most appropriate time and the most appropriate machinery which could carry out the purpose which both he and myself have in mind.

In regard to the Statutory Law Revision Committee of the type that was set up in 1921, I should like to inform the House of the work that it did and whether it could not have done something better. The Statute Law Revision Committee was appointed in 1921 and lasted up to 1932. After 1932 it died ; whether it died a natural death or an unnatural death is not a matter which I propose to disquisition about. But I should like to tell the House that during these eleven years that the Committee was in session from time to time, the work that it did was the codification of the Merchant Shipping Act, the Criminal Tribes Act, the Indian Succession Act, the Forests Act and the Tolls Act. Now, Sir, without any intention of casting any reflection upon the work of the Committee, I think it will be agreed that the production of five laws in a period of eleven years is certainly not an enormous piece of work which could be expected from a Committee of this kind. On the other hand when the

Committee was dissolved and when the responsibility fell upon the Government of India to do the work which the Committee was appointed to do— if I may say so again without reflection on the work of the Committee or without trying to take any credit for the Legislative Department of the Government of India—the Acts produced after the Committee were the Sale of Goods Act, 1930, the Partnership Act, 1932, Factories Act, 1934, Tariff Act, 1934, Petroleum Act, 1934, Insurance Act, 1938, Motor Vehicles Act, 1938 and Arbitration Act, 1940. Any one who knows these Acts will admit that each one of them is an enormous piece of legislation. The reason why the Statute Law Revision Committee failed to fulfil the promise which it was expected to fulfil was that there was a great defect in composition and constitution of the Committee. First of all, the Committee consisted of six members ; it was elected mostly from members of the legislature. No doubt the members who were elected were elected purely on the basis of their legal knowledge and legal acumen, but in my judgement that was a pure accident. The Chairman of the Committee was the President of the Council of State. I fail to understand what virtue there was in appointing the President of the Council of State as Chairman of this Committee which, as all of us know, requires specialised legal knowledge.

The second difficulty about the Committee was that its members were not paid members. I do not wish to suggest that if members are not paid they do not discharge the duty which all people are conscientiously required to do. But it did happen, and it is a fact, that the Committee met very seldom. The members of the Committee having been drawn from the legislature met only during the sessions, and when they were asked that now that they were present in Delhi they might devote some portion of their time to the discharge of their functions as members of the Statute Law Revision Committee, all of them pleaded that their legislative work was more important than the work of the committee. At the end of the sessions all of them naturally repaired to their homes in order to perform either their personal or their professional duties. The result was that the Committee was not able to devote all the time that it was expected to devote. Now obviously my Honourable friend Sir Hari Singh Gour will agree that if his purpose is to be carried out we must have an altogether different sort of Committee. It is no use having, a Committee of the sort that we had and which, for the reasons I have mentioned, did not fulfil the functions with which it was charged.

Now, Sir, there are two ways, in my judgement of doing the thing. First of all we might have a permanent Commission sitting for no other purpose except that of revising and codifying the statute. Secondly, if it is to be a permanent body it undoubtedly must be a body of experts who know their job. And I think

every one will agree that if experts are to be called away from their professions we must make it worth their while to come and serve on the Committee. Obviously it is a matter of cost. That being so, it is not possible for me to say off-hand that without examining the question of cost it will be possible for Government to say here and now that we shall agree to appoint a Statute Law Revision Committee of any sort that might be suggested either by Sir Hari Singh Gour or by any other member of the legislature.

There is also another way of carrying the purpose into practice. That might be by the appointment of a small standing committee consisting of the Law Minister of the Government of India, a Judge of the Federal Court, the Advocate-General of India, one or two Judges of the High Courts in India and two or three eminent lawyers. The Committee might be asked to sit at stated periods of the year and a person from the Law Department of the Government of India may be deputed to act as a Secretary, to collect the information and to place it before the Committee for the Committee to take notice of what might be done.

As I say these are various ways of carrying the purpose into effect. That as I said requires time and examination and it is not possible for the Government, besieged as it is with an infinity of problems of all kinds to find time for the work which it will have to do if I were to accept the resolution of Sir Han Singh Gour with the immediacy with which I believe he has charged it. Therefore, what I would like to suggest is this : that Sir Hari Singh Gour would realise that so far as the ultimate purpose is concerned, there is no difference of opinion between me and him. Both of us are agreed that this is a matter which the Government of India ought to take into consideration. The only difference is when and how, and that is a matter on which he need not press the Government for the immediate issue. Therefore my suggestion is this that as I have given a reply which meets more than half the ground on which he stands, I think he will agree that it will be gracious on his part to withdraw it.

Mr. Chairman: Amendment (by Mr. Naziruddin Ahmad) moved:

"That in clause 2 of the Bill, in the proposed new section 289B-(i) the word, figures, letters and brackets '57 & 58 Vict., c. 60) be omitted : and (ii) the word, figures, letters, and brackets' (57 & 58 Vict., c 60) ' be inserted in the margin."

The Honourable Dr. B. R. Ambedkar (Minister for Law) : I should like to explain the position. I would say that the amendment has no substance in it.

The identifying clause may either be in margin or may be in the context of the section itself. All that is necessary is that there should be some identification. Originally it is true that in all the Bills that we have presented to the Assembly, such identification references were in the margin. But recently the printers have adopted the method of giving the references in the very body of the section itself and the purpose is to economise paper For instance, when you have to give the references in the margin obviously you want to use a larger piece of paper. Since the war started this device was adopted just for the purpose of economising paper. I do not think there is any violation of the principles relating to drafting nor any violation of any law with regard to marginal notes. As a matter of fact marginal notes are unnecessary and need not be printed.

Shri Suresh Chandra Majumdar (West Bengal : General): There is such a thing as " inner margin " note which does not waste paper.

Mr. Speaker: Amendment (by Shri M. Ananthasayanam Ayyangar) moved:

"That in part (c) of clause 2 of the Bill, after the word ' Province ' wherever it occurs the words ' or a State ' be inserted. "

The Honourable Dr. B. R. Ambedkar (Minister for Law): As the amendment moved by my friend Mr. Ananthasayanam Ayyangar raises a question of law, it is only right and proper that I should take the responsibility upon myself to meet the point that arises out of his amendment. No one can deny that the object underlying the amendment of Mr. Ananthasayanam Ayyangar is a very laudable one. A Bill like this which deals with the nursing profession and tries to regularize and establish that profession on a footing which would gain the confidence of all those who take service from the nurses and that it should be extended to the whole of India. I say, is a very laudable thing. But unfortunately, situated as we are, and governed as we are by the Government of India Act, 1935, as adapted, I am afraid it will not be possible to accept his amendment because I have no doubt that his amendment would make the Bill *ultra vires* of the Legislature. Sir, to explain my point I should like to state to the House that for the moment the States are linked with the Union of India in two different ways. The one way by which they are linked is what is called the standstill agreement which has been made between the Union of India and the various Indian States. The second link by which the States are bound to the Indian Union are the Instruments of Accession. Now there is a fundamental difference between the two links. The standstill agreements are purely contractual. They preserve such agreements as existed between the old Government of India and the Indian States under paramountcy before the 15th of August 1947. As I said they are purely

contractual. They do not confer any jurisdiction upon the Government of India to legislate either by way of altering those arrangements or making them the foundation of any law which would bind the Indian States. Therefore, so far as we are concerned, in the matter of making any law by this legislature which is intended to be applicable to the Indian States, it is quite clear to my mind that we cannot take our stand on the standstill agreement. We must therefore, rely upon the Instruments of Accession which is the only foundation which gives us legal jurisdiction to pass any law. My submission is this, that if you take the Instruments of Accession, the Instruments of Accession, as they stand now—and I shall presently explain to the House why I emphasise ' as they stand now '—this House has no jurisdiction. In the first place this legislation relates to entry No. 16 in the Concurrent field. It does not relate, so far as the matter under legislation is concerned, to the Federal List or to the Provincial List. It relates only to the Concurrent List. Now, as everybody is aware, the Instruments of Accession, whatever power they give to the Central Legislature to legislate, definitely exclude all items which are included in the Concurrent List. I should have thought that by that very proposition, that the Concurrent Lists are not covered by the Instruments of Accession, the jurisdiction of this House is completely ousted. The only thing therefore that we have to find out is whether the Instruments of Accession which have been passed by the different States in favour of the Union of India cover anything which relates or which is equivalent to entry No. 16 in the Concurrent List. Now, Sir, these Instruments of Accession were placed on the Table of the house, and anybody who has had the time to scrutinize them would have found that the States have acceded only in respect of three subjects, and none of the subjects can be so interpreted as to include an item like item No. 16 in the Concurrent List. Therefore, my submission is this, that even if we were to rely upon the Instruments of Accession, this House cannot derive any jurisdiction from those Instruments of Accession, My Honourable friend Mr. Ananthasayanam Ayyangar evidently realised this difficulty and put forth the proposition which he said was capable of being adopted by this House in order to extend the legislation to the Indian States. His proposition was this. There have been many pieces of legislation passed by this House which were limited in the first instance to certain areas, such as for instance a province or a district or any smaller area, and the Bill included a clause which enabled the executive, by a notification, to extend that particular legislation to other areas not originally included in the Bill. Now that proposition, so far as it applies to the provinces of British India, is perfectly sound. But if it were lo be applied to the Indian States, it would be wholly unsound, and the reason is this. The analogy is absolutely false and not true. Now Sir, when we apply the

legislation, which is originally in the Bill itself confined to a particular area, to another area not made subject to that at the time when the Bill was passed, the position is this, that the area over which the legislation is subsequently extended to is not subject to the jurisdiction of that legislation. If the legislature wanted in the very first instance to apply that law to that area, nothing in the constitution of this Government or in the powers of the legislature could prevent the legislature from doing so. So far as the States are concerned, we have jurisdiction over their territory with regard to three subjects only; we have not got full jurisdiction. We are not limiting our jurisdiction when we are legislating with respect to a State in respect of the three subjects ; we are in fact spending our legislative authority to the fullest extent that we have. The analogy, therefore, is not a correct analogy. So far as the Provinces are concerned, we have at the moment, when we are enacting the law, jurisdiction which we would exercise if we wanted to do so. That is not the case with regard to the Indian States. True enough, if a supplementary Instrument of Accession was passed we could get the jurisdiction necessary for the purpose of enacting the law; but what I would like to submit to my friend Mr. Ananthasayanam Ayyangar is that the law can never be hypothetical and a law can never be passed in anticipation of some jurisdiction being acquired. That is contrary to the principle of legislation. Law must be definite, law must be absolutely clear as to what it applies, to what it cannot apply. And therefore, unless and until we have with us a supplementary Instrument of Accession giving the Central Legislature the power to extend this legislation to the States, I am sure we could not anticipate that there might be an Instrument of Accession which the Governor-General might accept and then we might get a chance to extend this legislation. I am sure that is contrary to the principles of legislation. All that, therefore, we must hope for, for the moment, is to confine the Bill to the Provinces of British India, to hope that we will get similar Instruments of Accession—supplementary ones—from the Indian States, when we can by law either extend our legislation to the States or the States can *pari passu* along with this legislation have similar legislation in their own States and make the provisions of this law applicable to their territory. Sir, I therefore think that this amendment would make the Bill *ultra vires* and therefore could not be accepted.

Mr. Speaker: The point has been cleared. Does the Honourable Member press his amendment now ?

Shri M. Ananthasayanam Ayyangar: I do not, Sir.

Mr. Speaker: Has the Honourable Member leave of the House to withdraw his amendment ?

The amendment was, by leave of the Assembly, withdrawn.

Mr. Speaker: The question is: " That clause 2 stand part of the Bill." The motion was adopted. Clause 2 was added to the Bill.

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INDIAN NURSING COUNCIL BILL

The Honourable Dr. B. R. Ambedkar: The position is, as I said on the last occasion this legislation refers to entry No. 16 in the Concurrent Legislative List. The executive authority with regard to the legislation framed under the Concurrent Legislative List does not vest in the Central Government. Rule making has been interpreted to be in exercise of the executive authority and the Central Government does not possess that executive authority and therefore, they cannot make the rules. The rules may be made bysomebody else. If my Honourable friend objects to the President making the rule, he may suggest some other method to making them, though he certainly cannot make any amendment whereby the responsibility or the authority for making the rules shall be vested in the Central Legislature. Section 8(1) of the Government of India Act and section 49(2) of the Government of India Act of 1939 are quite clear on this point.

Shri K. Santhanam: Here again, I find that it is rather a curious law that has been expounded the Central Government cannot make rules. A nominee of the Central Government can make rules but not the Central Government. The present proposal is that the President should be nominated by the Central Government and he may make rules. After all it is a Council of All India and I cannot see any authority in the Government of India to make rules. It is only so far as Provincial Councils are concerned that directions cannot be issued. I therefore think that the law as expounded is altogether wrong. The Central Government should have the power. I, therefore, suggest that the amendment should be accepted.

(4)

EXTRA PROVINCIAL JURISDICTION BILL

The Honourable Dr. B. R. Ambedkar (Minister for Law) : Mr. Speaker, I stand to make just a few observations in order to clear some of the doubts and suspicious which have been expressed by Members of the Assembly who have so far taken part in the debate.

Sir, the one point which was made by the Honourable Mover of the amendment was that this Bill was reviving the jurisdiction of paramountcy which was abolished by the Indian Independence Act. Now, it is quite true

that the Indian Independence Act releases the Indian States from all the obligations that were imposed upon them by virtue of paramountcy. But, I think, what that means is this, that the Dominion Government cannot as a succession State inherit the jurisdiction which arose out of paramountcy. It means nothing more than that ; it does not mean that any Indian State could not confer by an agreement upon the Dominion Government the rights and jurisdictions which were exercised by the British Government as against that Indian State. I think that point has been clearly lost sight of and I should like to repeat it again that what the Independence Act means is this; that the Dominion Government cannot be regarded as a succession State to the British Government in so far as Paramountcy is concerned. It certainly does not mean that if an Indian State chooses, for reasons which it thinks are imperative, to confer jurisdiction of the analogous type that arose out of Paramountcy upon the Dominion Government, there is anything either in the Government of India Act or in the Indian Independence Act. to prevent that Indian State from doing so. I think that point has to be clearly borne in mind. When the question is raised as to which are the Indian States to which this particular Bill and its provisions would apply, the answer to the question must be related to the Instruments of Accession which have been passed by the various Indian States in favour of the Dominion Government of India. Therefore, in order to understand what are the States to which this Bill applies. what we have to do is go to the Instruments of Accession and find out what is contained therein. As the House knows, so far as the accession of Indian States is concerned, they are divided into three categories: (1) fully jurisdictional States, (2) semi-jurisdictional States and (3) non-jurisdictional States. All the three classes of States have passed, barring a few exceptions here and there, Instruments of Accession in favour of the Indian Dominion. Now if Honourable members were to refer to the Instrument of Accession passed in Labour of the Dominion of India by States which fall in class (2) they will realise that their Instrument of Accession contains this very important clause which in order to remove all doubts and suspicious, I propose to read with your permission, Sir. This is the paragraph 1 :

> " And I further declare that the Dominion of India may through such agency or agencies and in such manner as it thinks fit exercise in relation to the administration of the civil and criminal justice in this State all such powers, authority and jurisdiction as were at any time exercisable by His Majesty's representative for the exercise of the functions of the Crown in its relation with the Indian States. "

That, I submit is a very important clause in the Instrument of Accession passed by the semi-jurisdictional States. Now if my honourable friends will

turn to the third category of States and read the Instrument of Accession passed by them, it reads as follows:

> " Whereas . . . of the said State or Taluka, am desirous that the Dominion of India should exercise in relation to the said *taluka* or state all the powers and jurisdictions which were exerciseable before such attachment by His Majesty's representative for the exercise of the functions of the Crown in its relation with the Indian States, " etc.

This is a clause which finds a place in the Instruments of Accession of the States falling in the second category or the third category; it has not found a place in the Instruments of Accession passed by the States which fall in the first category, namely, fully jurisdictional States. Obviously two things follow from this. The first is that this Bill does not apply to those States whose Instrument of Accession does not contain this clause; secondly, that this applies only to those States whose Instrument of Accession contains such a clause and which have voluntarily granted to the Dominion Government the rights, whether they arose out of treaty or sufferance or usage, which were exercised by the British Government; they have transferred them voluntarily to the Indian Dominion, and they may do so in future. Now the point is that ail that the Bill does is this that wherever any State has granted to the Dominion jurisdiction by virtue of its Instrument of Accession the Central Government will have the legal authority to exercise that jurisdiction. There is no case of usurpation at all; it is merely giving legal authority to rights and jurisdictions which have been voluntarily transferred by the Indian States to the Dominion of India. Therefore the first thing that I should like to emphasise is that there is no clandestine effort in the Bill to usurp any authority as against any Indian State which has not voluntarily surrendered its authority in this respect to the Dominion Government. I think that ought to put at rest all the doubts and suspicions which have been expressed in this House with regard to this Bill. And I do not think that if honourable Members bear in mind what I have stated there will be any necessity for very many of the amendments which I find on the order paper.

I do not want to say anything more because that is all that I wanted to say but my honourable friend Mr. Santhanam while making his observations on the Bill said that there was an inconsistency in the position which I took yesterday and the position as it arises from this Bill. I think my honourable friend Mr. Santhanam must have completely misunderstood what I said yesterday. What I said then was that having regard to the fact that the Nursing Bill had reference to entry No. 16 in the concurrent legislative list there was never any possibility of the Dominion Government acquiring any jurisdiction because the Instruments of Accession and the Indian States have

made it absolutely clear that if they at all join the Indian Union they will join it only with respect to list No. I which is a Federal List and that too with respect to some subjects only. Therefore my contention was that there was not even the remotest possibility, having regard to these circumstances, that the Indian Dominion should acquire any jurisdiction. And so any sort of legislation which he wanted to be introduced by his amendment to clause I would be purely speculative. Here so far as this Bill is concerned, there is nothing inherently impossible in the Indian Dominion acquiring further jurisdiction of an extra-provincial character, and therefore a legislation which looks in the application of this by anticipation would not be speculative because the possibility is always there. I therefore submit that there is no inconsistency in the two positions I have taken.

Mr. Speaker: I suppose the Honourable Member wishes to move the amendment at present.

Shri Himmat Singh K. Maheshwari: Yes and I would be grateful for a reply to the point that I have raised. Sir, I move:

" That in part (a) of clause 2 of the Bill for the words ' treaty, grant, usage, sufferance or other lawful means ', the words ' treaty or agreement ' be substituted. "

Mr. Speaker: Amendment moved :

" That in part (a) of clause 2 of the Bill, for the words ' treaty, grant, usage, sufferance or other lawful means ', the words treaty or agreement be substituted. "

The Honourable Dr. B. R. Ambedkar: Mr. Speaker, Sir the two amendments although they are set out under different headings are in substance one. The amendment No. 10 may be put as the result of amendment No. 9 and from that point of view, there is no difference between the two. The aim of both the Honourable Members who have tabled this amendment is to delete the word " grant, usage and sufferance ". I think that is what they want to do and in so far as that is their object, I have no doubt that the two amendments are one and the same.

Sir, I am sorry to say that I cannot accept this amendment and I am also sorry to say that the amendment has been based upon a misunderstanding. First of all, I should like to say with regard to the amendment moved by Mr. Naziruddin Ahmad that item (iii) in his amendment is entirely out of place. Tribal areas are part of British India or the Indian Dominion. Secondly there is no question of the Indian Dominion acquiring any extra territorial jurisdiction

so far as the tribal areas are concerned. What does the honourable Member want to do ? The Honourable member, if I understood correctly, wants to say that whatever extra territorial jurisdiction which the Dominion of India can exercise must be relatable to the Instruments of Accession. I think that is the sum and substance of his position and he wants to make it clear that the jurisdiction which the Central Government may exercise under the provisions of this Act must be in turn sanctioned by the Instruments of Accession.

Mr. Naziruddin Ahmad: That is also conceded to by the Government.

The Honourable Dr. B. R. Ambedkar: Now, sir, does the Act do anything different from what my honourable Friend wants us to do in this Bill ? As I have stated, what the Instruments of Accession passed by the Indian States enable the Central Government to do is to exercise all such powers, authority and jurisdiction as were at any time exercisable by His Majesty's representative for the exercise of the functions of the Crown in relation to the Indian States. That is what the Instruments of Accession passed by the Indian States empower the Central Government to do, to exercise all such powers, authority and jurisdiction as were at any time exercisable by His Majesty's representative. Let us go back to the question and ask what are the powers which His Majestys representative was exercising in relation to the functions of the Crown in relation to the Indian States. Any one who reads the Foreign Jurisdiction Act passed by the Indian Legislature where the powers, authority and jurisdiction which were exercised by the representatives of His Majesty exercising the functions of the Crown in relation to the States, are described in the very precise terms which are used in part (a) of clause 2, namely " treaty, grant, usage, sufferance or other lawful means ". These are exactly the words that occur in the Indian Foreign Jurisdiction Act and they are the words which we have adopted in our Act because the Instruments of Accession passed by the Indian States give all the power which His Majesty's representative exercises in relation to the States and Paramountcy. Therefore, it seems to me purely tautological whether you say that you derive your powers from the Instruments of Accession or whether you say that you use the powers given to you by "treaty, usage, sufferance and so on " which were the modes by which power was acquired by the Paramount authority, I see no difference at all. It is one and the same and therefore, I submit that apart from the difficulty that I have pointed out that you cannot accept an amendment relating to the Tribal area, this amendment seems to be utterly based upon some confusion of understanding of the real position and seems to me to be tautologous and it is nothing more than what has already been done in the Bill.

Shri M. AnanthasayanamAyyangar (Madras : General): My Honourable

friend the Minister for Law referred to the Foreign Jurisdiction Act. I come much nearer to the Indian Independence Act itself. Under clause 7 of the Indian Independence Act to which reference is made in this amendment of my Honourable friend, the Mover of the amendment, paramountcy lapses. How is it that Paramountcy conferred under the second part of the Accession which the Honourable the Law Minister read, exercised ? I will read the relevant clause in the Indian Independence Act:

" ..... and all powers, rights, authority or jurisdiction exercisable by His Majesty on that date in or in relation to Indian States by treaty, grant, usage, sufference or otherwise. "

These are the very words that have been copied.

Mr. Naziruddin Ahmad: is has now lapsed.

EXTRA PROVINCIAL JURDISDICTION BILL--------contd

The Honourable Dr. B. R. Ambedkar (Minister for Law): If this clause 6 had been described by a Member of the Legislature who is not a lawyer as an unusual thing, I would not have any complaint: But I think for a lawyer to get up and say that this clause is not only unusual and strange, but cuts at the very foundation in the judiciary, I cannot help expressing my surprise. Sir, as every lawyer knows, the law makes a distinction so far as right are concerned between two sets —political rights and rights which are justifiable. Justifiable rights must always be determined by a judicial decree founded upon evidence produced by the parties before the court. But the political right, and I shall presently explain what is meant by political right, is never submitted to a court in the ordinary sense of the word. Now rights, whether they are contractual or otherwise, between two states are never regarded as justifiable rights. They are always regarded as political rights *:* and that is the one reason why this clause has been introduced into this Bill. The extraterritorial jurisdiction which is being conferred by the Indian States upon the Indian Dominion is a matter between two states, and not between two individuals; and being a matter between two states, obviously all the matters connected with that jurisdiction are political rights, and as such they cannot be left to the judiciary to determine. This clause, as I said, is in no sense an unusual one, for if my honourable Friend refers to the British Act, on which this one is modelled, and refers to clause 4, he will find, the language of clause 6, is absolutely the same as the language of clause 4. Now, my honourable Friend also said that he was aware of certain provisions in the Evidence Act where a certificate given by a Secretary of a Department of the Government of India was said to be conclusive evidence of his authenticity, but it was never accepted as deciding the status of any particular individual. I am sure that he must have forgotten Section 86 of the Civil Procedure Code. If he refers to the Civil

Procedure Code, Section 86, he will find therein a provision which is very much analogous to the provisions contained in clause 6 of this Bill. Section 86 of the Civil Procedure Code relates to a suit against an Indian Prince or a foreign Envoy or any such person occupying the capacity or status of a non-indian citizen. It is provided by Section 86 of the Civil Procedure Code that no suit against an Indian Prince can proceed unless and until the party suing the Indian Prince secures the consent of the Secretary of State that he may be sued. The object underlying Section 86 is to give the Government of India an opportunity to express an opinion whether they regard the particular Prince who is sued, as entitled to the status of a sovereign Prince. If they think that he is entitled to the status of a sovereign Prince, we issue a certificate that he is a sovereign Prince, and the moment that certificate is issued the matter becomes a political matter and ceases to be justiciable in the ordinary sense and the suit falls through. There is nothing unusual in it.

My honourable Friend wants me to state the reason for this somewhat anomalous position which the law recognises not only in this country but in every other country. I could state for his information the reason why this distinction is made. Sir, supposing the Department of a State upon the assumption that a particular Prince is a sovereign Prince deals with him on that basis, and suppose that if the question of his status was left to be decided by an ordinary court of law, where evidence was brought in, and the court came to the conclusion that he was not a Ruling Prince in the sense of a Sovereign Prince, what happens ? We have in a situation like this two conflicting decisions—one decision given by the judiciary and another decision given by the State and both are irreconcilable. In such a situation the execution of a decree becomes absolutely impossible. In England, as my honourable Friend knows, there is no such thing as an Evidence Act, but there is a very well-established rule which the British Judiciary has adopted that in matters of this sort where they are likely to come into conflict with the Political Department of the State, they shall not entertain a plea and give a judgement because after all the judgement on a decree of the Judiciary has to be executed by the Department of the State and they do not want themselves to be entangled with the State Department. That, I think, is a very salutary reason why the courts themselves have abnegated the right of exercising any jurisdiction in a matter which is likely to be political.

I submit, therefore, that this clause, clause 6, is a very right clause, appropriate, and should remain in the Bill as it is.

Mr. Chairman : The question is : "That clause 6 stand part of the Bill."

The motion was adopted. (Clause 6 was added to the Bill.)

(5)

FEDERAL COURT (ENLARGEMENT OF JURISDICTION) BILL

The **Honourable Dr. B. R. Ambedkar** (Minister for Law): Sir, I beg to move for leave to introduce a Bill to provide for the enlargement of the appellate jurisdiction of the Federal Court in Civil cases.

Mr. Speaker: The question is:

" That leave be granted to introduce a Bill to provide for the enlargement of the appellate juriadiction of the Federal Court in Civil cases. "

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I introduce the Bill.

FEDERAL COURT (ENLARGEMENT OF JURISDICTION) BILL

The Honourable Dr. B. R. Ambedkar (Minister for Law): Sir, I move :

"That the Bill to provide for the enlargement of the appellate jurisdiction of the Federal court in civil cases be taken into consideration."

The Federal Court as constituted under the Government of India Act as adapted, exercises three kinds of jurisdiction :

(a) Original jurisdiction under section 204;

(b) Appellate jurisdiction over High Courts under section 205; and

(c) Advisory jurisdiction under section 213.

The present Bill is concerned only with the appellate jurisdiction of the Federal Court. As I said, the appellate jurisdiction of the Federal Court under Section 205 is a very limited jurisdiction. It is confined in the first place only to those cases in which the issue involved is the interpretation of the Constitution, that is to say, the interpretation of the Government of India Act, 1935.

Secondly, this limited jurisdiction accrues to the Federal Court, only if the High Court, after deciding a case before it gives a certificate to the effect that a question regarding the interpretation of the Constitution is involved.

It is only when these two conditions are satisfied, namely, that there exists an issue relating to the interpretation of the Constitution: and secondly, when the High Court has given a certificate that an appeal can go to the Federal Court under section 205.

The result of this limitation is this. All other appeals from the High Court in which questions relating to the interpretation of laws, other than the Constitution or those in which the interpretation of the Constitution is involved but where the High Court has not given a certificate, go directly to the Privy Council without the intervention of the Federal Court.

The object of this Bill is to prevent direct passage of appeals from the High Court to the Privy Council. In other words, the aim of the Bill is to make it

compulsory that all civil appeals which arise from the judgement or decree of the High Court shall in the first instance go to the Federal Court.

The method adopted by the Bill to achieve this object is as follows:

> What the Bill first does is to fix a day, which is the first of February, and which in the Bill is called " the appointed day ". The next thing that the Bill does is after the appointed day no appeals shall go to the Privy Council directly from the High court unless and until the appeal falls in a category of what is called " a pending appeal ". If an appeal on the first day of February can be described within the terms of this Bill as " a pending appeal " then the appeal shall be continued to be heard and decided by the Privy Council. But if on that day the appeal is not " a pending appeal " within the definition of this Bill, then the jurisdiction of the Federal Court extends to such an appeal as the Federal Court gets a right to hear and decide such an appeal.

Section 7 of the Bill describes what is " a pending appeal ". Now for this purpose a rough and ready made rule has been adopted in the Bill. The rule is this: that if the records of an appeal are transmitted by the High Court to the Privy Council on the appointed day or before the appointed day, then the appeal is a pending appeal and the Privy Council continues to exercise its jurisdiction to hear such anappeal, although it is a direct appeal.

If on the other hand the appeal is in such a state that the records have not been transmitted, then the appeal becomes automatically transferred so to say to the Federal Court and the Federal Court gets the right to hear the appeal.

Appeals to the Privy Council go in two different ways. They go under what are called the provisions of the Civil Procedure 12 NOON Code, Sections 109 and 110, which are called appeals by grants or they are appeals where the party have a right to appeal. In addition to that the Privy Council also has got the right to give special leave to appeal and when a party obtains special leave to appeal, such appeals also go to the Privy Council. Appeals which go to the Privy Council directly from the High Court on special leave being granted by the Privy Council, are also dealt with in Section 5 of the Bill. The provision there is this:

> " Every application to His Majesty in Council for special leave to appeal from a judgement to which this Act applies remaining undisposed of immediately before the appointed day shall on that day stand transferred to the Federal Court by virtue of this Act. "

If it is disposed of, that is to say, if it rejected no further question arises. If it is admitted then the Privy Council will be competent to deal with it. But if the Privy Council has not passed any order, then such an appeal shall be

deemed to be transferred to the Federal Court and the Federal Court will have the right to dispose of the matter.

I should like to tell the House in very concrete terms what this Bill does and what it does not do. I have told the House what this Bill does. I will tell the House now what this Bill does not do.

In the first place, it does not abolish appeals to the Privy Council in criminal matters. Criminal matters can still be entertained by the Privy Council from the Judgments of the High Courts. Secondly, it does not abolish appeals to the Privy Council from courts which are not high courts, that is to say, the courts of the Judicial Commissioner of Ajmer-Merwara or of Coorg. Thirdly, it does not abolish appeals to the Privy Council from the judgement of the Federal Court.

The House would probably like to know why these deficiencies have been retained in the Bill and why we have not been in a position to provide in this Bill for the complete transfer in all cases, criminal or civil, from the High Court to the Federal Court and From the Federal Court to the Privy Council. The reasons are to be found in certain limitations from which the Dominion Legislature, *i.e.,* the Constituent Assembly (Legislative) suffers. As members of the Assembly would realise we are exercising the powers for enlarging the jurisdiction of the Federal Court, which are given to us by Section 206 of the Government of India Act. If Honourable Members would refer to Section 206 they will see that it is a sort of section which gives constituent powers to this Assembly enabling it to alter the provisions of section 205 of the Government of India Act, 1935. Section 206 says:

> " (1) The Dominion Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgement, decree or final order of a High Court without any such certificate as aforesaid.
>
> (2) If the Dominion Legislature makes such provision as is mentioned in the last preceding sub-section consequential provision may also be made by Act of the Dominion Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts to His Majesty in Council, either with or without special leave. "

Sub-section (3) requires the sanction of the Governor-General.

Anybody who reads section 206 will find that although the power to amend and enlarge the jurisdiction of the Federal Court is given to this Assembly, it is limited in certain particulars. It is limited to civil cases. Therefore no provision can be made for the abolition of direct appeals in criminal matters. Secondly, it refers to direct appeals, that is to say appeals from the High Court to the Privy Council. The reason why we are not able to abolish appeals from the

Federal Court to the Privy Council is because of the existence of Section 208 in the Government of India Act. Section 208 says: (a) that an appeal will lie to His Majesty in council from a decision of the Federal Court, from any judgement of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act and (b) in any other case, by leave of the Federal Court or of His Majesty in Council. What I wanted to tell the House was that if it was desirable to abolish all appeals to the Privy Council and to enlarge the jurisdiction of the Federal Court in as complete a manner as we want to do for that purpose we would have been required to hold a session of the Constituent Assembly and ask the Constituent Assembly to pass a Bill, which it can do, notwithstanding any limitation in the Government of India Act 1935, for the simple reason that the Constituent Assembly is a sovereign body and is not bound by the provisions of the Government of India Act, 1935. The position of this Legislature which is spoken of as the Dominion Legislature is very different. It is Governed by the Government of India Act of 1935 and therefore it must conform in anything that it wants to do to such provisions of the Act which permit it to do what it wants to do. As I said, the only permissive section which we have in the Government of India Act is Section 206 and we have taken the fullest liberty of this section to enlarge the jurisdiction of the Federal Court to the fullest extent possible. The deficiencies in the Bill I do not think need worry any Members of the Legislature for the simple reason that this Act will be in operation only for a very short time. As soon as our constitution is framed and a passed by the Constituent Assembly, we shall then be in a position to make the amplest provision for the jurisdiction of the Federal Court and to abolish appeals to the Privy Council. For the moment I think the house must be satisfied with what is done under Section 206. Sir, I move.

Mr. Speaker: Motion moved :

"That the Bill to provide for the enlargement of the appellate jurisdiction of the Federal Court in civil cases be taken into consideration. "

The **Honourable Dr. B. R. Ambedkar:** Sir, I am grateful to the House for having expressed its general satisfaction with this Bill. I will, therefore, deal only with certain points of criticism, which have been raised by certain Honourable Members who have taken part in this debate. The first point of criticism relates to what I might call a timidity for my not going the whole hog and abolishing appeals to the Privy Council and conferring the fullest jurisdiction on the Federal Court. I am told that I am making a sort of artificial distinction between this Legislature and the Constituent Assembly and that I am for no reason limiting the powers of this House. I am sure that that is criticism which, to put it mildly, is certainly far from valid. I cannot accept the proposition that this legislature as distinguished from the Constituent Assembly is a completely sovereign body, as complete as the Constituent

Assembly itself. It is true that the same members who sit in this House sit in the Constituent Assembly, so that in regard to the personnel there is no distinction. But I have not the slightest doubt in my mind that so far as functions are concerned the two Assemblies are quite different. The function of the Constituent Assembly is to make the constitution and in making that constitution it is bound by nothing except by its own vote. So far as this Assembly is concerned, it is bound by the Government of India Act, 1935 ; that is the constitution which is binding upon this legislature. Except the British Parliament which has both sorts of powers, namely, ordinary legislative powers as well as constituent powers, I do not know of any Assembly anywhere which has got a written constitution which possesses powers to override a constitution which has created that particular legislature. I therefore submit that I am on perfectly strong and stable footing when I say that in carrying out the provisions of this Bill we must be bound by the limitations that have been imposed upon this legislature by the Government of India Act, 1935 as adapted.

I will now turn to the other criticism expression to which was given by my Honourable Friend Shri Alladi Krishnaswami Ayyar. With regard to his amendment I do not want to say that I regret that the amendment is something which I could not accept. All that I want to say is that according to my reading of the situation that amendment is probably unnecessary, and I will explain to him why I take that point of view. The ground that he urged for the amendment was that the Privy Council in a certain case decided in 1940 (as reported in the Punjab Co-operative Bank *versus* Commissioner of Income-Tax) stated, according to him, that they would not entertain any point relating to the consideration of the constitution of the High Court had not given a certificate ; therefore the Privy Council said that they would have to send that case back to the High Court for a certificate. His argument was that the decision of the Privy council in this case may also be accepted by the Federal court as binding upon itself; and therefore, wherever there was no certificate given and the matter came up before the Privy Council—and as a matter of fact it was found that a question relating to the constitution did arise—the Privy. Council would find itself unable to deal with that appeal. I think that was the sum and substance of his argument. Now what I would like to point out is that I think he has read a little more into the judgement of the Privy Council than it really says. I will read a few lines from the judgement. They have laid down three propositions which they say would arise in the consideration of section 205. the second proposition is the only one which is relevant to our purpose.

> " Secondly, if in the absence of a certificate it appears to the Board on an appeal that there is ground for thinking that that is a matter for the consideration of the High Court and that they ought to have given or ought to have withheld the certificate, the Board ought to decline to hear an appeal until the High Court had an opportunity of doing one or the other."

That is what the Privy Council have laid down, Now my submission is that this matter was as matter of fact considered by the department when this Bill was drafted, and it was felt that after all in the observations made by the Privy Council they have not said that they do not possess jurisdiction in a case of this kind. All that they have done is to lay down a sort of rule of prudence that if a case came in for which there was no certificate they would not deal with it directly—not they had no power to deal with it—but would send the case back to the High Court. Therefore, it does not mean that the Federal Court which under our Bill would be inhearing the jurisdiction of the Privy Council would have no jurisdiction because the Privy Council has laid down no such rule at all.

My second submission is that assuming that the Privy Council's dictum does go to the question of jurisdiction, is it necessary for us to presume that the Federal Court in exercising a new jurisdiction which we are giving to it would accept what has been laid down by the Privy Council ? The Federal Court would be free to give its own interpretation. It may say that notwithstanding that that certificate was not given, we shall entertain the question and decide it.

Thirdly, the Privy Council has also got the power to give special leave and they may give special leave and get over the difficulty. What I am trying to do is to explain to the House that we did not incorporate the sort of provision which my Honourable friend Mr. Alladi Krishnaswami has tabled in his amendment. But if eminent lawyers in this House think that we ought not to leave this question in doubt, and I find that he is supported by my friend, Bakshi Tek Chand, I myself would raise no objection to the amendment if they insist that the amendment should be introduced in the Bill.

Then the question was raised with regard to the Courts of the judicial Commissioners of Ajmer-Merwara and Coorg. It is quite true that it would be very anomalous that we should stop direct appeals from the High Court to the Privy Council and allow appeals from Judicial Commissioners to go to the Privy Council without the intervention of the Federal Court. The anomaly is patent and nobody can deny it. But the question is this : that unless and until we declare the Courts of the Judicial Commissioners as High Courts, we could not make this Bill binding upon them. Now I am told that the question of the declaration of the Judicial Commissioners Courts as High Courts would involve certain administrative problems. For instance, all the provisions in the Government of India Act relating to High Courts would have to be applied to the Judicial Commissioners before they become High Courts. It seemed to me that might create complications and that is the principal reason why we did not think it advisable at this stage to extend the provisions of this Act to

the Judicial Commissioners. After all, as I said, this Bill will be of a temporary duration. It may not be in operation for more than two or three months, and I do not think that within these two or three months any very large number of appeals from the Courts of the Judicial Commissioners are likely to come to the Privy Council.

Therefore, I submit, rather than face the difficulties that may arise out of administrative considerations, it might be better for this House to suffer the anomaly and let the position stand as it is.

With regard to the question of criminal appeals that matter has been fairly disposed of by my friend who spoke before me, and therefore I do not think it necessary for me to touch upon that matter at all.

Mr. Speaker: I might just state what I was feeling about the amendment. In case the Honourable Law Minister is inclined to accept it, isn't it likely that an objection might be raised about the competence of this Legislature inasmuch as the amendment uses the words " notwithstanding anything contained in section 205 of the Government of India Act "?

The Honourable Dr. B. R. Ambedkar: That also is a point.

Mr. Speaker: So that will also have to be considered. The House will be rising and in the recess the Law Minister may consider this point.

The Honourable Dr. B. R. Ambedkar: Yes, I will consider it.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at half Past a of the Clock, Mr. Speaker (The Honourable Mr. G. V. Mavalankar) in the Chair.

Mr. Speaker: The question is :

"That the Bill to provide for the enlargement of the appellate jurisdiction of the Federal Court in civil cases be taken into consideration. "

The motion was adopted. Clause 2 was added to the Bill.

The Honourable Dr. B. R. Ambedkar: Sir, with regard to clause 3 I would like to move an amendment. I move: "That in clause 3—

(1) The word ' and ' at the end of sub-clause (a)(ii) be omitted;

(2) The following be inserted as sub-clause (b):

' (b) in any such appeal as aforesaid, it shall be competent for the Federal Court is consider any question of the nature mentioned in sub-section (1) of section 205 of the Government of India Act, 1935 ; and

(3) The existing sub-clause (b) be re-lettered as s sub-clause (c). "

Mr. Speaker: I suppose this is an agreed amendment.

The Honourable Dr. B. R. Ambedkar: Yes, Sir.

Mr. Speaker: Amendment moved. "That in clause 3—

(1) The word ' and ' at the end of sub-sclause (a) (ii) be omitted ;

(2) The following be inserted as sub-clause (b):

' (b) in any such appeal as aforesaid, it shall be competent for the Federal Court to consider any question of the nature mentioned in sub-section (1) of section 205 of the Government of India Act, 1935 ' ; and

(3) The existing sub-clause (b) be re-lettered as sub-clause .(c)."

Mr. Speaker: Amendment moved :

" That after clause 5 of the Bill, the following new clause be inserted, namely:

' 5A. After the appointed day, any party to an appeal pending before His Majesty in Council, before that day, may apply to the Federal Court to withdraw the appeal to its own file, if the appeal is one which it filed after the appointed day before the Federal Court it could have jurisdiction under this Act to entertain it; and the Federal Court may after notice to the other party to the appeal withdraw the appeal to its own file on such terms and conditions as it may deem fit ' " .

The Honourable Dr. B. R. Ambedkar: Sir, I cannot accept this amendment. My honourable Friend has not defined what is a pending appeal. The Bill defines a pending appeal. An appeal where papers have been despatched is deemed to be a pending appeal under the Bill. After the papers have been despatched there is no provision in this Bill for withdrawal for the simple reason that it is presumed that when papers and documents have been despatched, the parties have incurred all liabilities for payment of such costs as may be involved in that appeal, and there is therefore no reason why the appeal should be transferred to the Federal Court with the obligation of a double expenditure once at the Privy Council end and once here: and I, therefore, think that we have to look at it purely from the point of view of the costs to the litigant. If sufficient costs have been incurred, then, I think it is not right that the appeal should be transferred to the Federal Court. No doubt here there is provision that the terms of such transfer and withdrawal may be prescribed by the Federal Court. But I think it would be putting an unnecessary obligation upon the parties which they may not voluntarily accept and I therefore think that the provisions contained in the Bill ought to be regarded as satisfactory at the present stage.

Shri M. Ananthasayanam Ayyangar: I do not like to press my amendment. I do not want to divide the House on the matter. I consulted the Law Minister and I thought he consented.

Mr. Speaker: Apart from this, I was feeling another difficulty, and that was as to whether the Federal Court could be treated as a court superior to the Privy Council for the purpose of withdrawal of an appeal that has been filed. It would have been another matter if the amendment had sought to compel the litigant himself, but that is a question of phraseology of the section.

Has the honourable Member leave of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn. Clauses 6 to 8 were added to the Bill. Clause I was added to the Bill. The Title and the Preamble were added to the Bill.

The Honourable Dr. B. R.Ambedkar: Sir, I move: " That the Bill, as amended, be passed. "

Mr. Speaker: Motion moved :" That the Bill, as amended, be passed."

6
PROVINCIAL INSOLVENCY (AMENDMENT) BILL

The Honourable Dr. B. R. Ambedkar (Minister for Law) : Sir, I move :

" That the Bill further to amend the Provincial Insolvency Act, 1920, be continued. "

Mr. Speaker : Motion moved :

" That the Bill further to amend the Provincial Insolvency Act, 1920, be continued. "

Shri Raj Krishna Bose (Orissa: General): I would like to know if this Bill also was referred to a Select Committee ?

Mr. Speaker: It was only introduced. **Shri K. Santhanam** (Madras : General) : It can be newly introduced. What is meant by ' continuation ' ? Only if it has gone through the other stages of discussion or Select Committee there is a purpose in having a motion for its continuation. It can as well be newly introduced.

Mr. Speaker: I would invite the Honourable Member's attention to the provisions of sub-clause (2) of section 30 of the Government of India Act, 1935, as adapted:

" A Bill which, immediately before the establishment of the Dominion, was pending at the Legislative Assembly of the Indian Legislature may, subject to any provision to the contrary which may be included in rules made by the Dominion Legislature under section 38 of this Act, be continued in the Dominion Legislature as if the proceedings take with reference to the Bill in the said Legislative Assembly had been taken in the Dominion Legislature. "

So the time and expenditure incurred in the previous stages—publication

etc.—are now dispensed with. That is the point in continuing the Bill.

Shri M. S. Aney (Deccan and Madras States Group): May I know, whether, in view of the wording of the particular clause, just read out it if necessary that a motion for continuation should be made ? The rule permits the Government to continue the Bill and take it through further stages if it wants to do so. Is a separate motion for its continuation therefore necessary at all ?

The Honourable Dr. B. R. Ambedkar: If the motion for continuation is not made the Bill lapses. That means all the stages will have to be begun again.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, on this point of order the section which you were pleased to read says that a Bill which was pending in the Legislative Assembly ' may be continued '. It is thus discretionary on the part of this House to continue or not to continue it. Therefore, a decision of the House is necessary.

Mr. Speaker: That is exactly why the motion is brought. The question is :

" That the Bill further to amend the Provincial Insolvency Act, 1920, be continued."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar (Minister for Law): Mr. Speaker, Sir I move:

" That the Bill further to amend the Provincial Insolvency Act, 1920, be referred to a Select Committee consisting of Shri Alladi Krishnaswami Ayyar; Dr. Bakshi Tek Chand, Shrimati G. Durgabai, Dr. P. S. Deshmukh, Shri M. Ananthasayanam Ayyangar, Pandit Thakur Das Bhargava, Mr. Naziruddin Ahmad, Shri Ram Sahai and the Mover, with instructions to report on or before the 16th March, 1948, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five. "

Sir, in order to put the House in possession of the facts which have made it necessary for Government to introduce this measure I should like to make some preliminary observations with regard to certain decisions which have necessitated the making of this provision. I think it would be enough if I began from 1924 when a case went up to the Privy Council which is known as Sat Narain *versus* Behari Lal. The facts of the case briefly were that a Hindu father had been adjudged insolvent. Now under section 17 of the Presidency Towns Insolvency Act the property of the insolvent becomes vested in the official Assignee from the date of the adjudication. The property of the Hindu father consists of two things : (i) his share in the joint family property, and (ii) his power to dispose of his sons property in the joint family for his personal debts provided that the debts were not incurred for an immoral purpose. The question that arose in that case before the Privy Council was whether the

power of the father to dispose of property of the son is property within the meaning of section 2(e) of the Presidency Towns Insolvency Act. On that issue the Privy Council gave its decision to the effect that the power of the Hindu father to dispose of the property of his son in the joint family was not ' property ' within the meaning of section 2(e) on the ground that section 2(e) contemplated that power which was absolute over property and power which was not absolute was not property. According to the Privy Council the power of the father to dispose of the sons' property was not absolute because it was subject to the condition that the debts for which the property could be disposed of must not be immoral. On that ground they did not agree that the Official Assignee could become automatically vested under section 17 with the property belonging to the son. In that particular care that decision of the Privy Council did not matter very much to the creditors, for the simple reason that the Presidency Towns Insolvency Act contains a separate section—section 52—which permits the Official Assignee and the creditors to pursue such property or such capacity to obtain the property of another person. Therefore although in that particular case the property did not automatically vest in the Official Assignee, yet the Official Assignee was free to pursue the property of the son which was liable under the rule of pious obligation to pay the debts of the father by separate proceedings; and I believe he did that.

Now what happened was this. After that decision of the Privy Council the courts in India had occasions to interpret another Act which is called the Provincial Insolvency Act. As lawyer members of this House will remember, we have two separate statues dealing with insolvency,—one which deals with insolvency taking place within the towns, and the other with those in the mofussil. The Provincial Insolvency Act does not unfortunately contain a provision such as section 52 which finds a place in the Presidency Towns Insolvency Act. Consequently when a similar question arose before the courts, namely, whether the property which a Hindu father could claim under his right or power to sell his son's interest for the payment of his own debts could be interpreted as property and become vested in the Official Assignee, only that was property within the meaning of section 2(e). Unfortunately what has happened is that different courts have interpreted this section 2(e) of the Provincial Insolvency Act in different ways. It would be interesting to note that the Bombay High Court has held that though the property does not vest power is not property and therefore, it does vest; the Patna High Court also follows the Bombay High Court and so does the Allahabad and Nagpur High Courts. On the other hand when you come to Madras, one Bench of the Madras High Court has held that the property vests, while another Bench has held that it does not vest. And the same is the case in Calcutta where one

Bench has held that the property does vest and another Bench has held that it does not vest.

Now I think this matter should be put right. The Madras High Court in one of its decisions clearly gave an indication to the Government of India that it was high time that legislation was brought in to set aside this discrepancy in the decisions of the different High Courts. Unfortunately during the war such a piece of legislation could not be brought in because there was not enough time. Therefore, it is to set right this discrepancy and division of opinion in the different High Courts that this measure has been brought in. All that this measure does is to reproduce bodily section 52 from the Presidency Towns Insolvency Act and makes it a part of the Provinvcial Towns Insolvency Act as section 50-A. There is nothing more that the Bill seeks to do.

As the House is aware, there is also a measure for a similar purpose standing in the name of Shrimati Durgabai. Her measure differs from the Government measure in two particular respects. She wants to give retrospective effect to the measure; the Government Bill does not propose to do so. The other provision contained in the Bill of Shrimati Durgabai is that the law not only should declare that the power which the Hindu father has over the son's interest in joint family property should be made clear as being available for distribution among the creditors, but that the power of disposal of the Manager also should be clearly stated. On that point all that I should like to say is this that I have not an empty mind but I have an open mind; and I am prepared to leave this matter to be decided by the Select Committee. Indeed one of the purposes or motives which have led me to move for reference to Select Committee was to enable the Select Committee to discuss these matters.

I do not think there is anything more I need say in elucidation of the provisions of this Bill. Sir, I move.

Mr. Speaker: Motion moved.

Prof. N. G. Ranga : There is the question of the manager. My Honourable friend wants this power to be extended to the Manager also. Evidently she has in mind some of the big zamindars who get their properties managed by managers.

The Honourable Dr. B. R. Ambedkar: They are called ' Karta *'.*

Prof. N. **G. Ranga:** It is bad enough to vest the power in the father but it is worse to vest it in the agent also.

The Honouraable Dr. B. R. Ambedkar: No, no. It is wrong.

Prof. N. **G. Ranga:** That is the answer given by lawyers. I am looking at it from the point of view of the debtors. They have as much right to be protected

as the creditors. Creditors are rich enough to engage these lawyers and get things done in their own way. I wish to suggest that the benefit of this Act should not be extended at all to these managers and it should not be given retrospective effect. This amendment may be passed but we should take care to see that the Law Minister comes forward at an early date with a suitable amendment in order to protect the interests of the sons also as against the vagaries of their own fathers.

Shri Biswanath Das : I have nothing to say about this particular Bill. In fact I have clearly stated that if the House comes to the conclusion that the Insolvency Act as it should stand then this Bill is a natural corollary to it. There is no denying that fact. Therefore, I have nothing more to say in the matter.

The Honourable Dr. B. R. Amebkar: Mr. Speaker, Sir, I will begin with my answer to the point made by my friend who spoke last. If I understood him correctly his points were two. One was that this was purely a provincial matter and ought therefore, to be left to the Provincial Legislatures.

Shri Biswanath Das: May I interrupt my honourable Friend, Sir ? I stated clearly that it is in the Concurrent List and that as such the Central Government should have left it to the Provincial Government and the Provincial Legislatures. I know it is in the Concurrent List.

The Honourable Dr. B. R. Ambedkar: I was just going to say that. The reason why it was put in the Concurrent List is undoubtedly—and I do not think there can be any other reason—that in a matter of this sort there ought to be uniformity if the Centre decided there should be uniformity. Therefore it is the right of the Central Legislature to legislate on the subject.

With regard to the question whether there should be an Insolvency Act or not I do not think that that can be point at issue on a matter of this sort. If my honourable Friend wants that there should be no insolvency legislation at all the proper thing for him would be to bring in a resolution before the House and say that all laws relating to insolvency may be abolished.

Shri Biswanath Das: May I state that I never said that the Insolvency Law is not necessary. All that I said is this law is unnecessary, undesirable and breeds immorality into society.

The Honourable Dr. B. R. Ambedkar: Yes, therefore not necessary. However with regard to the point made by Dr. Punjabrao Deshmukh he is not here—I was somewhat surprised when he said that the Bill ought to be circulated. He has accepted a place on the Select Committee and I am sure about it that the two positions are quite inconsistent. I do not wish to say anything more about what he has said.

With regard to the point Shrimati Durgabai, namely that the Bill should have

retrospective effect, I was bound to make a reference to it because I had induced her to withdraw her own Bill on a promise that when I bring my Bill I will say something about her Bill also. But as to the substance of it, as I say I feel a certain amount of doubt and difficulty, and I cannot very readily say in this House that I shall accept the proposition that the Bill should have retrospective effect. In fact one of the friends on the bench there who spoke said something which has a great deal offeree and we must be very careful in giving retrospective effect to a measure of this sort.

Now coming to the point made by my friend Professor Ranga—he of course has the habit of entering into subjects which undoubtedly he himself will acknowledge are not his own—1 am prepared to modify his argument and to give it some sort of a shape so that it might appear respectable. Now if I understand correctly, what he said was that there was a difference between the Presidency Towns Insolvency Act and the Provincial Insolvency Act, inasmuch as one contained a clause or a section like 6 and 52 while the other did not.

One could infer from what he said that the legislature in passing the law had different intentions from the very beginning that while they intended that since interest must pass to the Official Assignee under section 52 when the father became insolvent, the legislature has no such intention when they passed the Provincial Insolvency Act. I think my friend Professor Ranga, not being a lawyer, has not understood the position correctly. If he refers to the definition of the term ' property ' to which I made reference, he will see that in both the laws, provincial as well as Presidency Towns, the definition of' property ' is just the same. There is no difference at all. In both cases the phraseology as property or power. The difference is that under section 52, the official assignee can pursue property, but somehow there being an omission in the Provincial Insolvency Act, he has no right to pursue that property. Therefore, there is no doubt about it that this must have been a very inadvertent omission. If the legislature did not intend that the father's right to dispose of the property of his son under the Provincial Insolvency Act should not accrue to the official assignee, the definition of the term 'property' in the Provincial Insolvency Act would be very different to what it is now, and therefore, I submit with all respect to my friend that his point really has no substance. Sir, I move.

Mr. Speaker: The question is: That the Bill further to amend the Provincial Insolvency Act, 1920,be referred to a Select Committee consisting of Shri Alladi Krishnaswami Ayyar, Dr. Bakshi Tek Chand, Shrimati G. Durgabai, Dr. P. S. Deshmukh, Shri M. Ananthasayanam Ayyangar, Pandit Thakur Das Bhargava, Mr. Naziruddin Ahmed, Shri Ram Sahai and the Mover, with

instructions to report on or before the 16th March 1948, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five. "

The motion was adopted.

(7)
* RESOLUTION *RE.* EXTENSION OF PERIOD MENTIONED IN SECTIONS 2 AND 3 OF INDIA (CENTRAL GOVERNMENT AND LEGISLATURE) ACT, 1946 AS ADAPTED.

The Honourable Dr. B. R. Ambedkar (Minister for Law) : Sir I move :

" In persuance of the proviso to section 4 of the India (Central Government and Legislature) Act, 1946, as adapted by the India (Provisional Constitution) Order, 1947, this Assembly hereby approves the extension of the period mentioned in sections 2 and 3 of the said Act for a further period of twelve months commencing on the first day of April, 1948. "

Now, Sir, it is not necessary for me to enter upon a very lengthy discussion in support of this resolution. It will suffice if I tell the House that the Central Legislature has passed various legislations imposing controls on commodities, requisitioning land, and so on, matters which are purely in the Provincial List. This power the Centre was able to exercise because of the proclamation of emergency which was issued by the Governor-General when the war broke out: and as the House knows, since the' proclamation is issued by the Governor-General the Central Legislature gets the necessary power to make any order or to pass any law notwithstanding the fact that the subject falls in the Provincial Legislative List. It is also provided in the Government of India Act that this power of legislating upon provincial subjects would disappear six months after the Proclamation of emergency has been withdrawn. Now this power was exhausted in the year 1946. The Government of the day felt that although technically the emergency had disappeared, yet factually there did exist a certain urgency for the controls imposed by the Central Legislature to be continued. There was no method by which the Central after the emergency had ended, could get the power to keep the controls alive and therefore, the Central Legislature approached the British Parliament which was then the only authority which could confer such power on the Central Legislature to make due provision in this matter, and Parliament, as the House will remember in 1946 passed an Act called the India (Central Government and Legislature) Act, 1946. Section 2 of that Parliamentary statute permitted the Dominion Legislature make laws with regard to the matters which it had done during that emergency. But what the

parliamentary Statute did was that it gave the power to the Central Legislature one year only in the first instance.

Under the provisions of that Act, the Central Legislature passed Acts called the Essential Supplies (Temporary Powers) Act, 1946 and the Requisitioned Land (Continuance of Powers) Act, 1947. That law was passed in 1946. Under the Parliamentary Statute it continued in existence for one year ; that is up to 1947.

Now, Section 4 of the Parliamentary Statute as I said provided that the Centre could exercise these powers for one year. It also provided that the power could be extended by another year if the Governor-General so certified. Consequently those two Acts to which I made reference were continued in existence by another year by the fiat of the Governor-General and we are now exercising those powers under that extension effected by the Governor-General. Now, under the extension effected by the Governor-General, these would continue up to 31st March 1948. The various Departments of the Government of India have been consulted in this matter in order to ascertain whether they could do without these controls after the 31st March 1948. I believe that almost all the Departments who are charged with the administrative control feel that they need at least one year more to continue these controls.

As I said, section 4 of the Parliamentary Statute gave the power for one year in the first instance, in the second instance one year on the fiat of the Governor-General, and thereafter by a Resolution of this House. The position, therefore, is this, that unless this House passes a Resolution extending that power, these powers will come to an end on the 31st March 1948. As the House will remember, I am only a Law Minister, I have no administrative responsibilities for the affairs of the Government of India, and I am therefore not in a position to answer any questions if they are asked as to whether in fact this extension is necessary, but I can tell the House that all the Departments are agreed that this extension is necessary, and I hope that the House will accept the view of the Departments of the Government of India and pass this Resolution. I have taken the precaution of calling my friend Dr. Syama Prasad Mookerjee to be by my side in order to reply any questions requiring detailed particulars with regard to the necessity of a provision of this sort. Sir I move.

Mr. Speaker: Resolution moved:

" In pursuance of the proviso to section 4 of the India (Central Government and Legislature) Act, 1946, as adapted by the India (Provisional Constitution) Order, 1947, this Assembly hereby approves the extension of the period mentioned in sections 2 and 3 of the said Act for a

further period of twelve months commencing on the first day of April, 1948."